

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL E. CREECH,

Plaintiff,

Case No. 11-14769

v.

HONORABLE AVERN COHN

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 14)
AND
GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT (Doc. 10)
AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 12)
AND
REMANDING MATTER FOR FURTHER ADMINISTRATIVE PROCEEDINGS

I.

This is a social security case. Plaintiff Carl E. Creech appeals from the final determination of the Commissioner of Social Security (Commissioner) that he is not disabled and therefore not entitled to disability insurance benefits. The matter was referred to a magistrate judge for all pretrial proceedings. Plaintiff and the Commissioner filed cross motions for summary judgment. Plaintiff requested that the Commissioner's decision be reversed and benefits awarded, or that the matter be remanded for further proceedings. The magistrate judge issued a report and recommendation (MJRR) recommending that plaintiff's motion be granted as to a

remand and the Commissioner's motion be denied. Specifically, the magistrate judge recommends that the matter be remanded for further administrative proceedings under sentence six¹ of 42 U.S.C. § 405(g) so that the ALJ can consider new evidence. See MJRR at p. 9-10.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Plaintiff's motion for summary judgment is GRANTED IN PART AND DENIED IN PART. The Commissioner's motion for summary judgment is DENIED.

¹ "A district court's authority to remand a case for further administrative proceedings is found in 42 U.S.C. § 405(g)." Hollon v. Commissioner, 447 F.3d 477, 482-83 (6th Cir. 2006). The statute permits only two types of remand: a sentence four (post-judgment) remand made in connection with a judgment affirming, modifying, or reversing the Commissioner's decision; and a sentence six (pre-judgment) remand where the court makes no substantive ruling as to the correctness of the Commissioner's decision. Under a sentence six remand, the administrative proceedings can be reopened so that the Commissioner may consider "new and material evidence that for good cause was not previously presented to" the Commissioner. Hollon, 447 F.3d at 483.

This matter is REMANDED for further administrative proceedings consistent with the MJRR.

SO ORDERED.

Dated: October 23, 2012

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 23, 2012, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160